E COP

71-1638

FILED
JUN 17 1972
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No.

JOHN NELSON, JAMES STOKES, JAMES CALLAGHAN, JAMES LOCK, AND MICHAEL DELANEY,
Petitioners,

vs.

JAMES RICHARD DUNCAN,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

RICHARD L. CURRY,
Corporation Counsel of the City of Chicago,
511 City Hall, Chicago, Illinois 60602,
Attorney for Petitioners.

WILLIAM R. QUINLAN,
Assistant Corporation Counsel,
Of Counsel.

RESPONSE NOT PRINTED
REPLY BRIEF NOT PRINTED

THE BUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

INDEX.

	PAGE
Citation to Opinion Below	1
Jurisdiction	1
Questions Presented	2
Statutes and Constitutional Provisions Involved	2, 3
Statement	3, 4
Reasons for Granting the Writ	5
Conclusion	10
Appendix A—Opinion of the District Court	A1
Appendix B—Opinion of the Court of Appeals	A6
Appendix C—Complaint	A18
Appendix D—Opinion of the Supreme Court of Illinois	A22

CITATIONS.

Cases Cited.

American Construction Co. v. Jacksonville, 148 U. S. 372 (1893)	9
Bowens v. Knazze, 237 F. Supp. 826 (N. D. Ill. 1965)	8
Geach v. Moynihan, 207 F. 2d 714 (7th Cir. 1953)	6
Jennings v. Nester, 217 F. 2d 153 (7th Cir. 1954)	9
Kerr v. City of Chicago, 424 F. 2d 1134 (7th Cir. 1970)	6
Land v. Dollar, 330 U. S. 731 (1947)	9
Larsen v. Domestic & Foreign Commerce Corp., 337 U. S. 682 (1949)	9
Lewis v. Brantigan, 227 F. 2d 124 (5th Cir. 1955)	6
Metcalf v. Ogilvie, 436 F. 2d 261 (7th Cir. 1970)	7

Miranda v. Arizona, 384 U. S. 436 (1966) 7
Monroe v. Pape, 365 U. S. 167 (1961) 6
People v. Duncan, 40 Ill. 2d 105, 238 N. E. 2d 595 (1968) 5, 8
People v. Jackson, 41 Ill. 2d 102, 242 N. E. 2d 160 (1968) 6
Refoule v. Ellis, 74 F. Supp. 336 (N. D. Ga. 1947) 6
U. S. v. General Motors, 323 U. S. 373 (1945) 9

Statute.

42 U. S. C. § 1983 ..... 5, 6, 8, 9, 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No.

JOHN NELSON, JAMES STOKES, JAMES CALLAGHAN, JAMES LOCK, AND MICHAEL DELANEY,
Petitioners,

vs.

JAMES RICHARD DUNCAN,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

OPINIONS BELOW.

The opinion of the Court of Appeals, not yet reported, appears in Appendix B hereto.

The opinion of the District Court for the Northern District of Illinois was not reported. The memorandum opinion is reproduced in Appendix A.

JURISDICTION.

The judgment of the Court of Appeals for the Seventh Circuit was entered on March 29, 1972. A petition for rehearing was denied on April 25, 1972. This Court's jurisdiction is invoked under 28 U. S. C. 1254 (1). The District Court's jurisdiction was invoked under the Fourteenth Amendment, Title 28, U. S. C., sections 1331, 1343; and Title 42, U. S. C., sections 1983, 1988.

QUESTIONS PRESENTED.

1. Whether an allegation that defendants took a confession from the plaintiff which was subsequently, under the "totality of circumstances" doctrine, found to be inadmissible, is sufficient, of itself, to state a claim under the Civil Rights Act, 42 U. S. C., section 1983, where the complaint does not allege violence, or other indignity.

2. Whether the decision expands the reach of 42 U. S. C., sec. 1983, beyond its proper scope.

FEDERAL CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

1. Constitution of the United States.

(a) Fourteenth Amendment:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . .

2. United States Code, Title 42.

§ 1983. Civil Action for deprivation of rights:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof to

the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress.

STATEMENT OF THE CASE.

The plaintiff, James Richard Duncan, brought suit in the United States District Court under the federal Civil Rights Act, Title 42, U. S. C., Section 1983. In the complaint it was alleged that:

> "On or about November 4, 1959, the plaintiff was taken into custody by defendants John Nelson and James Stokes while he was leaving Boys Court at 1121 South State, Chicago, Illinois and taken to a room on the eighth floor of that same building at about 9:30 a.m. From 9:30 a.m. until 7:42 p.m. on November 12, 1959, the defendants individually and jointly interrogated the plaintiff regarding the murder of one Samuel Schwartz on October 4, 1959. After over four hours of interrogation by the defendants, the plaintiff orally confessed to the murder of Samuel Schwartz, and at 7:42 p.m., after more than ten hours of interrogation he signed a written confession." [The Complaint appears as Appendix C to this Petition.]

The complaint also states that the plaintiff was tried and convicted of murder after evidence of the oral and written confessions had been introduced into evidence during the trial, and was sentenced to thirty years of imprisonment. In 1968, on writ of error, the Illinois Supreme Court held that the confession under "the total combination of circumstances" was involuntary and it was error to admit it into evidence, *People* v. *Duncan*, 40 Ill. 2d 105. (The opinion appears as Appendix D to this Petition.) The Illinois Supreme Court reversed the judgment of the trial court and remanded the cause for a new trial. Subsequently,

at the new trial where the involuntary confession was excluded, the plaintiff was acquitted.

The complaint further alleged that from January 27, 1960, until December 20, 1968, the plaintiff was incarcerated in various prisons of the State of Illinois and of Cook County, Illinois, as a direct result of the wrongful conviction resulting from the violation of his civil rights by the defendants [See Appendix C].

The plaintiff submitted that as a direct and proximate result of the acts of the defendants he suffered bodily pain and injury and mental anguish and that he lost and will lose large sums of money by reason of having been imprisoned for nine years.

The District Court dismissed the complaint. The United States Court of Appeals reversed and remanded the cause back to the District Court. The Court of Appeals held that the District Court's conclusion that the elements of damage sought by the plaintiff were attributable solely to his conviction and confinement was overly narrow. The plaintiff may not, the Court acknowledged, recover damages for his conviction and incarceration, but he must be afforded an opportunity to present proof concerning any harm which the defendants knew or should have known plaintiff would suffer as a result of the unlawful interrogation and confession.

The Court of Appeals further stated that plaintiff's allegation that the confession was involuntary would, without more, normally be merely an unsupported conclusion of fact and need not be deemed admitted as true on a motion to dismiss. However, where a judicial proceeding has found a confession to be involuntary, then such an allegation is not an unsupported conclusion. The Court concluded that the allegation of the taking of an involuntary confession, under these circumstances, stated a claim cognizable under Section 1983.

ARGUMENT.

The Court should grant certiorari to review the judgment of the U.S. Court of Appeals for the Seventh Circuit in the instant case because this case comes within the purview of Rule 19(b) of the Rules of the Supreme Court of the United States in that, by expanding the reach of 42 U. S. C., sec. 1983, beyond its proper scope, the judgment below presents a novel and important question of law, which law has not been, but should be, settled by this Court. The position of the defendants-petitioners, if sustained, would terminate the litigation, and, as a result, concerns an issue fundamental to the further conduct of the case.

I.

The court below has incorrectly determined, for the first time, that the taking of a subsequently determined involuntary confession is, in and of itself, constitutional grounds for a civil rights action.

The Court of Appeals, in reversing the District Court's judgment, allowed a prior collateral determination that plaintiff's confession was involuntary to sustain the plaintiff's burden under section 1983 of the Civil Rights Act "to set forth specific illegal misconduct and resultant harm in a way which will permit an informed ruling whether the wrong complained of is of federal cognizance." (Appendix B, p. A13.) It did so even though the only issue in *People* v. *Duncan*, 40 Ill. 2d 105, 238 N. E. 2d 595 (1968), was whether the trial judge erred in finding the confession voluntary under the "totality of the circumstances" doctrine and, thus, erred in admitting the confession. The conclusion of the Illinois Supreme Court technically involved only the determination that the prosecution failed to sustain its

burden of proving the confession voluntary by the preponderance of the evidence. (See *People* v. *Jackson*, 41 Ill. 2d 102, 242 N. E. 2d 160 (1968).)

The Court rejected the defendant's contention that even a factually supported allegation of an involuntary confession will not *of itself* support an action under Section 1983. Up until this novel decision by the Court of Appeals, physical violence was always an adjunct to a proper Civil Rights Action based on the extraction of an involuntary confession. See *Kerr* v. *City of Chicago*, 424 F. 2d 1134 (7th Cir. 1970); *Lewis* v. *Brantigan*, 227 F. 2d 124 (5th Cir. 1955); *Geach* v. *Moynihan*, 207 F. 2d 714 (7th Cir. 1953); *Refoule* v. *Ellis*, 74 F. Supp. 336 (N. D. Ga. 1947). The Court cited no opinion which held, and the defendants are unaware of any (other than the broad, general suggestion in Justice Harlan's concurring opinion in *Monroe* v. *Pope*, 365 U. S. 167 at 196 (1961), which is in an entirely different context) that holds the taking of a subsequently-determined involuntary confession is in and of itself grounds for a civil rights suit.[1] The effect of this ruling is to authorize for the first time a civil rights complaint in cases where, although no specific acts of physical violence, illegal arrest, improper search and seizure, or unlawful incarceration are alleged in the complaint, an improper confession (subsequently-determined) has been taken which allegedly causes the victim mental anguish or emotional stress. This, of course, is completely apart from whether or not that confession is even used against him or if it is subsequently excluded by a court.

---

1. Additionally, every case cited by the Court (Appendix B, p. A15) apparently for the proposition that the taking of an involuntary confession results in a violation of due process, was decided in a framework where the right of due process recognized was the right under the Fourteenth Amendment not to have a confession, judicially determined to be involuntary, introduced in a criminal proceeding terminating in a conviction.

Police officers should not be held to higher standards than judges who are called upon to determine the voluntariness of a confession. Unfortunately, the Court of Appeals decision does not agree with that principle.[2] The most that can be said of a confession that is subsequently determined judicially to be involuntary is that there is a technical or abstract violation of the defendant's constitutional rights. Without more, until now, this did not state a cognizable civil rights claim. See *Rodes* v. *Municipal Authority*, 409 F. 2d 17 (1969), cert. den. 396 U. S. 861 (1969) reh. denied, 396 U. S. 950 (1969); *Metcalf* v. *Ogilvie*, 436 F. 2d 361, 363 (7th Cir. 1970).

II.

The effect of the decision of the court below is, for the first time, to force a police officer to wait until a subsequent judicial determination to ascertain that a confession under all the circumstances was not voluntary and thus, a possible civil rights violation.

The plaintiff did not allege any specific acts of unreasonable violence or any violence whatsoever in the District Court or in the Court of Appeals. Nor did he even allege any unusual indignity. The defendants could not reasonably have foreseen that a deprivation of the plaintiff's constitutional rights might result from their conduct. The con-

---

2. It is interesting to note that every case cited by the Court of Appeals in its opinion to support its conclusion (Appendix B, p. A15) recognizes that the resolution of this issue is extremely difficult, and every case cited by the court also came before the reviewing court only after, at least, a trial court and in most instances an appellate court had found the confession voluntary. Also the court's ruling is particularly anomalous in view of its recognition that an interrogation violative of the precepts of *Miranda* v. *Arizona*, 384 U. S. 436 (1966) does not result in an actionable tort since in a *Miranda* situation a police officer can easily protect himself by complying with the required warnings.

fession in the instant case was determined to be involuntary on the basis of the doctrine of the totality of circumstances surrounding the taking of the confession. The "totality of circumstances" doctrine embodies factors which the policeman may know or may not know of and involves circumstances that they may or may not control.

No one circumstance in which a police officer knew or should have known under the totality of circumstances doctrine is enough by itself to render the confession involuntary. It is only in consideration of all the circumstances that the confession becomes involuntary.

In the instant case the plaintiff alleged that his confession was involuntary because he was questioned by the defendants from 9:30 a.m. until he orally confessed four hours later. The questioning continued until he signed a written confession ten hours after the interrogation was commenced. In ordering a new criminal trial the Illinois Supreme Court recognized that there were cases involving longer detention than present here where the voluntariness of the confession was upheld. See *People* v. *Duncan*, 40 Ill. 2d 105, 108.

The decision of the court below places a police officer in an impossible position. Now, for the first time a complaint states a cause of action under Section 1983 against a particular police officer merely because it alleges that he took a confession subsequently determined to be involuntary. As was stated in *Bowens* v. *Knazze*, 237 F. Supp. 826, 829 (N. D. Ill. 1965), in holding police officers not liable for a subsequently determined illegal search and seizure, "It would require law enforcement officials to respond in damages every time they miscalculated in regard to what a court of last resort would determine constituted an invasion of constitutional rights, even where, as here, a trial judge—more learned in the law than a police officer

—held no such violation occurred." The defendants contend that this extension of Section 1983 is highly unreasonable.

The logical conclusion of this Court of Appeals decision is that every police officer who obtains a confession which is later held invalid could be sued for obtaining that confession. That is not the purpose of Section 1983. This same Court of Appeals has pointed out "that the Federal Civil Rights statutes were not enacted to discipline officials." *Smith* v. *Daugherety*, 286 F. 2d 777, 778 (7th Cir. 1961) cert. den. 368 U. S. 903, 82 S. Ct. 180, 7 L. ed. 97 (1961); *Jennings* v. *Nester*, 217 F. 2d 153, 155 (7th Cir. 1954) cert. den. 349 U. S. 958, 75 S. Ct. 888, 99 L. ed. 128 (1955).

III.

The case is ripe for review.

This Court has in the past reviewed decisions when a Court of Appeals has reversed the granting of a motion to dismiss and has ordered the case remanded for trial. In *Land* v. *Dollar*, 330 U. S. 731, at 734 N. 2 (1947), this Court said, "Although the judgment below was not a final one, we considered it appropriate for review because it involved an issue 'fundamental to the further conduct of the case.' " In *Larsen* v. *Domestic & Foreign Commerce Corp.*, 337 U. S. 682, at 685, n. 3 (1949) this Court repeated the same statement. Certiorari has been granted where a non-final judgment presents a novel and important question of law, which is fundamental to the further conduct of the case, and where, as here, the petitioner's position, if sustained by this Court, would terminate the litigation. *American Construction Co.* v. *Jacksonville, T & KR. Co.*, 148 U. S. 372 (1893). See also *United States* v. *General Motors Corp.* 323 U. S. 373, at 377 (1945).

In *Gillespie* v. *United States Steel Corp.*, 379 U. S. 148, at 152, 153 (1964), this Court again reiterated:

> "Under Section 1291 an appeal may be taken from any 'final' order of the district court. But as this Court often has pointed out, a decision 'final' within the meaning of Section 1291 does not necessarily mean the last order possible to be made in a case . . . The requirement of finality is to be given a 'practical rather than a technical construction.' "

CONCLUSION.

The defendants-petitioners believe that the ground upon which the cause was reversed and remanded expands the reach of 42 U. S. C., sec. 1983, beyond its proper scope. The issue thus presents a novel and important question of law. The position of the defendants-petitioners, if sustained, would terminate the litigation, and, as a result concerns an issue fundamental to the further conduct of the case.

For the foregoing reasons a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Seventh Circuit.

Respectfully submitted,

RICHARD L. CURRY,
Corporation Counsel of the City of Chicago,
511 City Hall, Chicago, Illinois 60602,
Attorney for Petitioners.

WILLIAM R. QUINLAN,
Assistant Corporation Counsel,
Of Counsel.

APPENDIX A.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

JAMES RICHARD DUNCAN,
Plaintiff,
vs.
JOHN NELSON, JAMES STOKES, JAMES CALLAGHAN, JAMES LOCK, MICHAEL DELANY and ROBERT MILLER, individually and as Police Officers of the City of Chicago and of the Chicago Transit Authority, Jointly and Severally,
Defendants.

No. 70 C 1271

MEMORANDUM OPINION AND ORDER

This cause presents itself to the Court on a motion to strike the complaint filed by the plaintiff, one James Duncan, by the defendants, John Nelson, James Stokes, James Callaghan, James Lock, Michael Delaney and Robert Miller. Nelson, Stokes and Callaghan allegedly are officers of the Chicago Police Department and are represented by Corporation Counsel. Defendant Miller allegedly is a police officer in the employ of the Chicago Transit Authority. James Lock and Michael Delaney, both alleged officers for the Chicago Police Department, are unrepresented.

The facts are simple. On November 12, 1959, the plaintiff, then seventeen, was arrested and charged with the murder of one Samuel Schwartz. From 9:30 A.M. to 7:42 P.M., on that day, the plaintiff was grilled unmercilessly until he admitted to and signed a confession to the murder.

On January 20, 1960, his case came to trial, and with the admission into evidence of the oral and written confession, and over the plaintiff's plea of not guilty, was found guilty by the jury. The judge in that case found that there had been no undue influence in the taking of the confessions and allowed their admission.

On May 28, 1968, the Supreme Court of Illinois on appeal ruled:

> "Except for the denial of physical evidence or threat thereof, all of the relevant factors which tend to show that the confession was not given voluntarily are not denied by the People. And, while the record does not demonstrate that the police had defendant placed in the 'hole' for 18 days in order to obtain a confession, it does demonstrate that they knowingly took advantage of the situation. The total combination of circumstances surrounding the giving of the confession indicate that it was involuntary and it was error to admit it in evidence. *People* v. *Price,* 24 Ill. 2d 46."

The Supreme Court reversed the decision below and remanded for a new trial. That trial took place on December 20, 1968. The jury found the plaintiff not guilty, the written and oral confession not having been entered into evidence. The plaintiff was released.

The plaintiff brings this suit for monetary damages for the violation to his civil rights by the interrogation by the defendants, which resulted in the obtaining of the confessions which allegedly caused his illegal incarceration in jail for eight years.

The brief submitted by the Chicago Policemen, and adopted by the other answering defendant, argues in the main that a decision by my learned brother, Judge Will, of this District, controls. *Bowen* v. *Kanazze,* 237 F. Supp. 826 N. D. Ill. 1965). In that case, Judge Will, presented with what at first glance appears to be a similar problem,

ruled that police officers could not be held liable for future interpretations of the law, as such would be *nunc pro tunc*, second-guessing the officers. Such a precedent would seriously impair the unified interpretation of the law and the work of the police. [See also *Pierson* v. *Ray*, 386 U. S. 547 (1967)]. In spite of Justice Douglas' strong views on the subject, the Supreme Court has consistently held laws in this area to be applied in a non-retroactive manner. *Johnson* v. *New Jersey*, 384 U. S. 719 (1966).

The plaintiff in his answer has argued that while Judge Will's opinion may be good law, it is in fact inapplicable here, since the Supreme Court of Illinois was interpreting a "new" position in light of old law.

The Illinois Supreme Court opinion was silent as to the authorities upon which it relied. It simply stated that the confession was involuntary when viewed in the light of all the circumstances involved. The defendant's brief takes the opinion that the law had been decided by the United States Supreme Court in the *Escobedo* case. *Escobedo* v. *Illinois*, 378 U. S. 478 (1964). What *Escobedo* dealt with was not involved in plaintiff's first case, and *Escobedo* was not retroactive. What the *Escobedo* case dealt with was not the rightfulness of admission into evidence of an involuntary confession obtained through force, but the right to one's attorney at that stage to insure is voluntariness.

The error was not in the manner of the taking of the confession which was to blame for the plaintiff's incarceration, but rather the admission of inadmissible confessions into evidence.

In their briefs, both parties miss the point. What we might be concerned with here, were the problem actually before us, and what the Illinois Supreme Court was concerned with, was a severer and more dramatic problem than that raised in *Miranda* and *Escobedo*. It is the problem

of the admission into evidence of a confession obtained by force exercised through torture and inhumane treatment. Since the enactment of the 1870 Illinois Constitution, the courts of this state have barred such evidence. They have concerned themselves only with how to determine whether such confessions were involuntarily obtained. Should the judge inquire, or should he leave the question of voluntariness up to the jury? Should the judge inquire in such matters *sua sponte*, or would a defendant have been deemed to have waived the issue by not bringing up the matter by motion to suppress or otherwise? The line of cases, state and federal, barring from evidence confessions obtained by torture or repulsive police conduct is so substantial and consistent over the years that the absence of citation of authority in the State Supreme Court's opinion seems to me restraint from engaging in needlessness. As the Supreme Court of the United States said in *Brown* v. *Mississippi*, 297 U. S. 278 (1935), in quoting from a Mississippi Supreme Court case, *Fisher* v. *State*, 145 Miss. 116, 134; 110 S. 361, 365, stated at page 287:

> "Coercing the supposed state's criminals into confessions and using such confessions so coerced from them against them in trials has been the curse of all countries. It was the chief inequity, the crowning infamy of the Star Chamber, and the Inquisition, and other similar institutions. The constitution recognized the evils that lay behind these practices and prohibited them in this country. . . . The duty of maintaining constitutional rights of a person on trial for his life rises above mere rules of procedure and wherever the court is clearly satisfied that such violations exist, it will refuse to sanction such violations and will apply the corrective."

What we do have here, however, is another problem altogether. One to which none of the parties clearly address themselves. It is the problem of whether this action

for damages under the Federal Civil Rights Act can be brought by the plaintiff against these named defendants at this time in this court, if the torturous act, as a result of which the plaintiff may still be suffering, was the inhumane treatment he received from the police officers, who are the parties defendant to this suit, occurred more than ten years before this action was brought in this court, or if, on the other hand, the torturous act, as a result of which the plaintiff may still be suffering, was the error of the trial court in admitting into evidence improperly a forced confession, occurred more than five years ago. Under either theory, the statute of limitations has run. In addition, the improper act of the trial court is not the act ~~of~~ of the police officers, and the immunity of the judiciary from prosecution for its errors of judgment may not be made the subject of a civil rights action.

There are no grounds whatever upon which the cause of action before me may be maintained, and it must be dismissed. The Clerk is directed to enter an order to that effect. This does not preclude plaintiff on the issue presented to me in this case from bringing an action against the State of Illinois, if one exists, for damages. It is therefore not a judgment on such merits as might be pursued in such an action.

Case dismissed.

ENTER:

JAMES B. PARSONS,
United States District Judge.

Date: December 31, 1970.

APPENDIX B.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

SEPTEMBER TERM, 1971—JANUARY SESSION, 1972

No. 71-1208

JAMES RICHARD DUNCAN,
Plaintiff-Appellant,

v.

JOHN NELSON, et al.,
Defendant-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 70 C 1271

JAMES B. PARSONS,
Judge.

March 29, 1972

Before DUFFY, *Senior Circuit Judge,* SPRECHER, *Circuit Judge,* and ESCHBACH, *District Judge.**

ESCHBACH, *District Judge.* This is a review of an order dismissing a civil action arising out of appellant's civil rights complaint under 28 U. S. C. §§ 1331 and 1343 and 42 U. S. C. §§ 1983 and 1988, in which appellant seeks compensatory relief for an alleged deprivation of his rights secured by the Fourteenth Amendment, which deprivation is founded upon an alleged involuntary confession extracted by these defendants. In dismissing plaintiff's complaint,

* Judge Jesse E. Eschbach is sitting by designation from the United States District Court for the Northern District of Indiana.

the district court held that the applicable statute of limitations had expired and that the defendant police officers could not be held liable for the improper act of an Illinois state court in admitting into evidence an involuntary confession, which allegedly led to plaintiff's conviction and incarceration. We reverse and remand.

Plaintiff's complaint alleges in substance the following facts: Five of the six defendants were police officers for the City of Chicago; the remaining defendant was a police officer for the Chicago Transit Authority. At all times related herein, the defendants were acting under color of the statutes, ordinances, and regulations of the State of Illinois, the City of Chicago, and the Chicago Transit Authority. On November 12, 1959, the plaintiff was taken into custody by two of the defendants as he was leaving Boys Court. He was thereafter individually and jointly interrogated by the defendants from 9:30 a.m. until 7:42 p.m. concerning the murder of one Samuel Schwartz. The result of this interrogation was an oral followed by a written confession of guilt for that murder. On January 20, 1960, over defendant's objection, the confession was admitted into evidence, and plaintiff was subsequently convicted of the murder of Samuel Schwartz. Plaintiff was sentenced to 30 years imprisonment and was confined from January 27, 1960 to December 20, 1968. In 1968, the Supreme Court of Illinois held that the confession obtained by these defendants was involuntary and that it was error to admit it as evidence. The case was remanded for new trial and at that trial, where the involuntary confession was excluded, plaintiff was acquitted.

Plaintiff alleges that the acts of these defendants deprived him of life, liberty, and property without due process in violation of the Fourteenth Amendment of the United States Constitution. Plaintiff submits that as a direct and proximate result of the aforementioned acts of

these defendants, he suffered bodily pain and injury, mental anguish, and that he has lost and will lose large sums of money by reason of having been imprisoned illegally for over nine years.

The foregoing is the extent of plaintiff's well-pleaded material allegations, and for the purposes of defendant's motion to dismiss they are deemed admitted. *Gardner* v. *Toilet Goods Ass'n*, 387 U. S. 167 (1957); *Dacey* v. *New York County Lawyers Ass'n*, 423 F. 2d 188 (2d Cir. 1970), *cert. denied*, 398 U. S. 929 (1970). The district court, however, in dismissing this cause also took notice of the opinion of the Illinois Supreme Court in *People* v. *Duncan*, 40 Ill. 2d 105 (1968), which set aside plaintiff's earlier conviction. The district court presumably accepted as true the facts found in that opinion and related those facts in dismissing this cause in the district court. In *People* v. *Duncan*, *supra*, the court found as uncontroverted fact that the plaintiff, prior to his interrogation, had been in custody on another unrelated charge. They further found that for the immediate 18 days prior to this interrogation, plaintiff had been placed in the "hole," a form of solitary confinement, where he slept on the floor, received one meal a day, and saw neither family nor friends. On his release from custody at about 9:30 a.m. on the morning of November 12, 1959, the defendants, knowing plaintiff had been in the "hole," apprehended him, removed him to an upstairs room, handcuffed him to a chair, and proceeded to interrogate him until he orally confessed at 1:30 p.m. and signed a written confession at 7:42 p.m. that evening. In that action, plaintiff had also alleged physical violence and threats, but the court there did not find it necessary to reach those allegations.

In finding that the applicable statute of limitations had expired, the district court did not provide us with the statutory basis for that holding. The statute under which

this action was brought, 42 U. S. C. § 1983, does not provide for any period of limitations. In this situation, it is clear that we must look to the statute of limitations which Illinois would enforce had this action been brought there. *O'Sullivan* v. *Felix*, 233 U. S. 318 (1914); *Hornsby* v. *Fishmeal Company*, 431 F. 2d 865 (8th Cir. 1970); *Wakat* v. *Harlib*, 253 F. 2d 59 (7th Cir. 1959). Illinois has no statute of limitations directly applicable for an action alleging deprivation of civil rights.

This court in *Wakat* v. *Harlib*, *supra*, held that the most appropriate statute in Illinois for an action under 42 U. S. C. § 1983 would be ch. 83, § 16, Ill. Rev. Stat. 1969, which creates a five-year statutory period for bringing civil actions not otherwise provided for. The only alternative statutory period presented in this appeal was ch. 83, § 15, Ill. Rev. Stat. 1969, which provides for a two-year period in actions for damages with injury to the person. Although we see no reason to depart from our holding in *Wakat*, *supra*, whichever statute was chosen here would not affect the result of this issue because both statutes would be tolled during plaintiff's minority and his term in prison.

It is generally held that whether an applicable state statute has been tolled in a federal action is a matter governed by state law. *Jones* v. *Bombeck*, 375 F. 2d 737 (3d Cir. 1967); *Hughes* v. *Smith*, 264 F. Supp. 767 (D. N. J. 1967), *aff'd*, 389 F. 2d 42 (3d Cir. 1967); *Gordon* v. *Garrison*, 77 F. Supp. 477 (E. D. Ill. 1948). Illinois law provides that either of the above-mentioned statutory periods will be tolled under certain disabilities, and such statute provides in pertinent part:

> If the person entitled to bring an action . . . is, at the time of [sic] the cause of action accrued, within the age of twenty-one years, . . . or imprisoned on a criminal charge, he . . . may bring the action within

two years after the disability is removed. ch. 83, § 22, Ill. Rev. Stat. (1969).

On November 12, 1959, the date of plaintiff's alleged unlawful interrogation, and the earliest date on which his cause could have accrued, plaintiff was 18 years of age. Until he attained the age of 21 in 1962, the statute was obviously tolled. Upon reaching the age of majority in 1962, plaintiff was imprisoned on a criminal charge, and that disability remained until his release from custody on December 20, 1968. The present action was filed on May 26, 1970, approximately one and one-half years after the disability had been removed. Consequently, irrespective of which statutory limitation period is applied, the two or five-year period, the present cause was brought within the two-year post-disability period provided for in ch. 83, § 22, Ill. Rev. Stat. (1969).

As an additional ground for dismissing this action, the district court concluded that "the improper act of the trial court [in admitting this evidence] is not the act of the police officers." Earlier in the court's order of dismissal, it explained this holding by stating that "the error was not in the manner of the taking of the confession which was to blame for the plaintiff's incarceration, but rather the admission of inadmissible confessions into evidence." Obviously, the district court construed the complaint as one seeking damages only for the harm which befell plaintiff as a result of his conviction and confinement. To the extent the court held that plaintiff may not recover damages for his conviction and incarceration, we agree.

Presumably, the district court in viewing this as essentially a tort action concluded that any damage to the plaintiff arising from his conviction and imprisonment was not proximately caused, *i.e.*, was not the natural or foreseeable consequence, of defendants' acts. *Pierson*

v. *Ray*, 386 U. S. 547, 556 (1967); *Monroe* v. *Pape*, 365 U. S. 167 (1961), Frankfurter, J., dissenting at 207; *Kerr* v. *City of Chicago*, 424 F. 2d 1134 (7th Cir. 1970). The court, in effect, held that the act of the trial judge in admitting the confession was a superseding intervening cause for which the defendants cannot be held liable.

Admittedly, on initial analysis it is arguable that these defendants surely realized or should have realized that the fruits of their allegedly unlawful labors would be admitted into evidence against this plaintiff; therefore, the argument would proceed, the defendants should be held liable for all foreseeable consequences of their acts, including the incarceration. *See generally Kline* v. *1500 Massachusetts Avenue Apartment Corporation*, 439 F. 2d 477 (D. C. Cir. 1970); *Gaither* v. *Myers*, 404 F. 2d 216 (D. C. Cir. 1968); Rest. (Second) Torts § 448 (1965). However, these defendants are presumed to have known the then existing law concerning involuntary confession. Therefore, it can be assumed that the defendants knew or should have known that their actions in extracting this confession from the plaintiff would render it involuntary and hence inadmissible. To find that these defendants, who knew or should have known this confession was inadmissible, would foresee that the trial judge would erroneously admit this unlawful confession is untenable.

An argument somewhat similar to the one plaintiff proposes here was rejected in *Striker* v. *Pancher*, 317 F. 2d 780 (6th Cir. 1963). In that case, plaintiff after having been released from prison on a writ of habeas corpus, sued the defendant for damages under § 1983, alleging his prior plea of guilty had been upon the advice, counsel, and the insistence of defendant Pancher, the sheriff. The trial court directed a verdict for the defendant, and the court of appeals affirmed, holding primarily that the "color of authority" surrounding the defendant

sheriff was an executive rather than a judicial authority, but also suggesting that plaintiff could not recover from the defendant because the failure to inform the plaintiff properly of his right to plead not guilty and the failure to furnish counsel was attributable to the court and not to the sheriff. *Cf. Slaughter* v. *Dunitz*, 436 F. 2d 583 (7th Cir. 1970).

Even if the court were to find that defendants should have foreseen the admission of this confession, to go further and hold defendants liable for plaintiff's conviction would be to overlook the very real possibility that at the original trial plaintiff may have been convicted without the use of this evidence.[1] Plaintiff's acquittal in the later trial, where the confession was excluded, does not compel the inference that the confession was the sole or even material basis for his initial conviction—stale evidence and missing witnesses can be paramount difficulties in a new trial years after an original conviction. In addition, to conclude that the number of years the plaintiff spent in confinement was a proximate result of this conviction, which was a proximate result of the admission into evidence of this confession, which in turn was a proximate result of defendant's unlawful acts in obtaining that confession, is not only extremely tenuous, but also makes any award of damages on that basis impossible. Assuming, contrary to what we have held, that plaintiff's conviction was a proximate result of defendants' acts, it does not follow that the particular sentence imposed upon the plaintiff was a proximate result of that conviction. Sentencing within the bounds permitted by the particular statute, is a discretionary function of the trial judge. The factors considered by the judge in determining that

1. It should also be noted that at the first trial the jury was entitled to determine the weight and credibility to be afforded the confession and could have given it little or no weight. *People* v. *Cook*, 33 Ill. 2d 363, 211 N. E. 2d 374 (1965).

sentence are many, and to conclude that the particular conviction in question was the sole consideration in formulating the sentence would be erroneous; therefore, to assess damages on the basis of the years spent in prison would also be erroneous.

We agree with Judge Parsons that plaintiff has not stated a cause of action against these defendants for his conviction and incarceration. We cannot agree, however, with the district court's conclusion that "[t]here are no grounds whatever upon which the cause of action may be maintained." Plaintiff, in his complaint, sought relief for the alleged pain, injury, and mental anguish he suffered as a result of defendants' acts. We must infer that the district court concluded that these elements of damage sought by the plaintiff were attributable solely to his conviction and confinement. This court finds that construction of plaintiff's complaint to be overly narrow.

The defendants argue that plaintiff's complaint, on its face, fails to state a cause of action. They argue the complaint merely alleges that the defendants' "interrogated" plaintiff and, as a result, obtained a confession which was later found to be involuntary. Ordinarily, defendants' argument would be well taken. It has been held consistently that in an action under § 1983, a plaintiff is required to set forth specific illegal misconduct and resultant harm in a way which will permit an informed ruling whether the wrong complained of is of federal cognizance. *Rhodes* v. *Municipal Authority*, 409 F. 2d 17 (1969), *cert. denied*, 396 U. S. 861 (1969), *reh. denied*, 396 U. S. 950 (1969); *Shakman* v. *Democratic Organization of Cook County*, 435 F. 2d 267 (7th Cir. 1970); *Wilson* v. *Post-Conviction Hearing, Act of the Commonwealth of Pennsylvania*, 321 F. Supp. 1234 (W. D. Penn. 1971). Plaintiff alleged that the confession was "involuntary." Without more, this would be an unsupported conclusion of fact

that need not be deemed admitted as true on this motion. *Homan Mfg. Co.* v. *Russo*, 233 F. 2d 547 (7th Cir. 1956); *Shakman* v. *Democratic Organization of Cook County*, 310 F. Supp. 1398 (N. D. Ill. 1970), *rev'd on other grounds*, 435 F. 2d 267 (7th Cir. 1970). However, where, as here, a judicial proceeding has found a confession to be "involuntary," then such an allegation would not be an unsupported conclusion. Moreover, the situation here is rather unique in that the district court accepted as true, for the purposes of this motion, the factual findings of the Illinois Supreme Court. Those findings clearly support the contention that this was an involuntary confession.

Defendants would argue, however, that even a factually supported allegation of an involuntary confession will not of itself defeat a motion to dismiss an action under § 1983. The cases cited by defendants do not support that proposition. The decisions on which defendants rely hold merely that an interrogation violative of the precepts of *Miranda* v. *Arizona*, 384 U. S. 436 (1966), does not transform that interrogation into an actionable tort. *See, e.g., Thornton* v. *Buchanan*, 392 F. 2d 870 (7th Cir. 1968); *Ransom* v. *City of Philadelphia*, 311 F. Supp. 973 (E. D. Penn. 1970); *Allen* v. *Eicher*, 295 F. Supp. 1184 (D. Md. 1969); *Ambeck* v. *Clark*, 287 F. Supp. 208 (E. D. Penn. 1968). Those decisions would not be inconsistent with a finding that a factually supported allegation of an involuntary confession would state a cause of action under § 1983. Those decisions arguably can be justified on either one of two alternative grounds not present in the instant case, which grounds are: (1) A violation of the requirements of *Miranda, supra*, is not a per se constitutional violation, but only constitutes an unrebuttable presumption in the criminal action that the defendant's rights were transgressed, (2) The individual's rights are not violated until a confession obtained in violation of *Miranda, supra*,

is admitted into evidence against him in violation of his Fifth Amendment rights.

The alleged violation in this case occurred prior to both *Miranda, supra,* and *Malloy* v. *Hogan,* 378 U. S. 1 (1964), which latter decision first incorporated the requirements of the Fifth Amendment's prohibition against self-incrimination into the Fourteenth Amendment's due process clause. Plaintiff's complaint therefore is not one alleging a violation of the requirements of *Miranda, supra,* nor is it one alleging a strict Fifth Amendment violation. Plaintiff's cause of action stands, if at all, solely under the provisions of the due process clause of the Fourteenth Amendment as that clause was interpreted before the Fifth Amendment's privilege against self-incrimination was incorporated therein.

For some time before the events here alleged, it had ceased to be seriously questioned that the due process clause of the Fourteenth Amendment prohibited compulsion to incriminate oneself by fear of hurt, torture, exhaustion, or any other type of coercion that falls outside the scope of due process. *Adamson* v. *California,* 332 U. S. 46, 54 (1947). *See, e.g., Spano* v. *New York,* 360 U. S. 315 (1959); *Malinski* v. *New York,* 324 U. S. 401 (1945); *White* v. *Texas,* 310 U. S. 530 (1940); *Brown* v. *Mississippi,* 297 U. S. 278 (1936). Although the due process right allegedly violated here may be found in the historical underpinnings of the Fifth Amendment's prohibition against self-incrimination, "the essence of plaintiff's claim," as Justice Frankfurter stated in his dissent in *Monroe* v. *Pape,* 365 U. S. 167 (1961), " is that police conduct here alleged offends those requirements of decency and fairness, which because they are implicit in the concept of ordered liberty, are imposed by the Due Process Clause upon the states." *Monroe, supra* at 208.

Defendants finally contend that physical violence is a necessary adjunct to a civil action based on the extraction of an involuntary confession. The cases cited by defendant do embody elements of violence, but none of those cases have held that violence is a prerequisite to a § 1983 action. *See, e.g., Kerr* v. *City of Chicago*, 424 F. 2d 1134 (7th Cir. 1970); *Lewis* v. *Brautigan*, 227 F. 2d 124 (5th Cir. 1955); *Geach* v. *Moynihan*, 207 F. 2d 714 (7th Cir. 1953); *Refoule* v. *Ellis*, 74 F. Supp. 336 (N. D. Ga. 1947). In *Kerr* v. *City of Chicago, supra*, this court stated:

> All of the acts of commission and omission—the totality of all the circumstances—are of great importance in determining whether plaintiff's confession was coerced in violation of his civil rights and thereby cognizable under 42 U. S. C. § 1983. 424 F. 2d at 1138.

There is no indication from that language or from any other case that physical violence need be present to produce the coercion necessary to constitute an involuntary confession cognizable under § 1983. *See Spano* v. *New York, supra; Haley* v. *Ohio*, 332 U. S. 598 (1948). In fact, Justice Harlan in his concurrence in *Monroe* v. *Pape, supra*, recognized the possibility that psychological coercion leading to a confession could constitute damages under § 1983, by using it as an example of an action under § 1983 which would ordinarily not fulfill the requirements for a common law tort. *Monroe, supra*, Harlan, J., *concurring* at 196 n.5. Although physical violence would ordinarily make damages greater and more easily ascertainable, we see no reason in either logic or experience to require the presence of physical violence as a necessary prerequisite to suit under § 1983. Moreover, there has been no finding by any court which would preclude plaintiff from his proof on the issue of physical violence. The Illinois Supreme Court simply found the confession

involuntary absent the allegations of violence, and did not find it necessary to reach the issue of physical violence.

Accordingly, the order of dismissal is reversed and the cause remanded for trial in accordance with our conclusion that while the plaintiff may not recover damages for his conviction and incarceration, he should be afforded an opportunity to present his proof concerning any harm which he allegedly suffered and which these defendants knew or should have known plaintiff would suffer as a result of the unlawful interrogation and confession.

APPENDIX C.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

JAMES RICHARD DUNCAN, *Plaintiff,* *vs.* JOHN NELSON, JAMES STOKES, JAMES CALLAGHAN, JAMES LOCK, MICHAEL DELANEY and ROBERT MILLER, individually and as Police Officers of the City of Chicago and of the Chicago Transit Authority, Jointly and Severally, *Defendants.*	Civil Action No. 70 C 1271

COMPLAINT.

1. Jurisdiction of this Court is invoked under the Fourteenth Amendment to the United States Constitution and Title 28, United States Code, Sections 1331 and 1343, and Title 42, United States Code, Sections 1983 and 1988.

2. The matter in controversy exceeds the sum of Ten Thousand Dollars ($10,000) exclusive of interest and costs.

3. During all times herein mentioned, Plaintiff was a citizen of the United States, and he resided in Chicago, Illinois.

4. During all times herein mentioned, Defendants, John Nelson, James Stokes, James Callaghan, Michael Delaney and James Lock were duly appointed, qualified and acting police officers of the Police Department of the City of Chicago, a municipal corporation of the State of Illinois,

and were agents of the said city, acting in the course of their employment and engaged in the performance of their duties as police officers of the said city, and Defendant Robert Miller was a duly appointed, qualified and acting police officer of the Chicago Transit Authority, a municipal corporation of the State of Illinois and was the agent of said Transit Authority acting in the course of his duties as a police officer of the said Transit Authority.

5. During all times herein mentioned, the Defendants and each of them were acting under color of the statutes, ordinances, regulations, customs and usages of the State of Illinois, of the County of Cook, of the City of Chicago, and of the Chicago Transit Authority.

6. On or about November 12, 1959, the Plaintiff was taken into custody by Defendants John Nelson and James Stokes while he was leaving Boys Court at 1121 South State Street, Chicago, Illinois and taken to a room on the eighth floor of that same building at about 9:30 A. M. From 9:30 A. M. until 7:42 P. M. on November 12, 1959, the Defendants individually and jointly interrogated the Plaintiff regarding the murder of one Samuel Schwartz on October 4, 1959. After over four hours of interrogation by the Defendants, the Plaintiff orally confessed to the murder of Samuel Schwartz, and at 7:42 P. M. after more than ten hours of interrogation he signed a written confession to this murder.

7. On or about January 20, 1960, the cause of the People of the State of Illinois v. James R. Duncan, Indictment Number 59-3802 came to trial in the Criminal Court of Cook County, the Plaintiff having entered a plea of not guilty.

8. On or about January 27, 1960, the jury in the above-described cause found the Plaintiff guilty of the murder of Samuel Schwartz after evidence of the oral confession and written confession had been introduced into evidence dur-

ing the trial. The Plaintiff was sentenced to thirty years imprisonment.

9. On or about May 29, 1968, the Supreme Court of Illinois rendered its opinion in which it held that the confession obtained by the Defendants from the Plaintiff on November 12, 1959 was involuntary and that it was error to admit it in evidence. The Illinois Supreme Court reversed the judgment of the trial court and remanded the cause for a new trial.

10. On or about December 9, 1968, the cause of the People of the State of Illinois v. James R. Duncan, Indictment Number 59-3802 came to trial in the Circuit Court of Cook County, Criminal Division, the Plaintiff having entered a plea of not guilty.

11. On or about December 20, 1968, the jury in the above-described cause found the Plaintiff not guilty of the murder of Samuel Schwartz, no evidence having been introduced regarding any oral or written confessions made by the Plaintiff.

12. From January 27, 1960 until December 20, 1968 the Plaintiff was incarcerated in various prisons of the State of Illinois and of Cook County, Illinois as a direct result of the wrongful conviction resulting from the violation of his civil rights by the Defendants.

13. The aforementioned acts of the Defendants constituted violations of the Constitution and laws of the United States of America, in that the Plaintiff was deprived by the Defendants of his rights not to be deprived of his life, liberty and property, without due process of law, all in violation of the Fourteenth Amendment to the United States Constitution and Title 28, United States Code, Section 1343(3) and Title 42, United States Code Section 1983.

14. As a direct and proximate result of the aforementioned acts of the Defendants, and each of them, the Plaintiff suffered great bodily pain and injury and mental

anguish, from then until now and he will continue to suffer in the future; he has lost and will in the future lose large sums of money by reason of having been illegally and wrongfully imprisoned for over nine years due to the acts of the Defendants and by reason of having been greatly humiliated and held up to public scorn and derision as a result of the foregoing acts of the Defendants.

Wherefore, plaintiff demands judgment against the Defendants and each of them, jointly and severally, in the amount of $600,000 plus the costs of this action together with attorneys' fees, and he further demands such other relief as this Court deems just, proper and equitable.

Respectfully submitted,

.....

Attorney for Plaintiff

WILLIAM J. COONEY
HOLLAND C. CAPPER
PAUL D. FRENZ
McBRIDE, BAKER, WIENKE & SCHLOSSER
Suite 500
110 North Wacker Drive
Chicago, Illinois 60606
FInancial 6-6191

APPENDIX D.

(No. 38666.—Reversed and remanded.)

THE PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error, *vs.* JAMES RICHARD DUNCAN, Plaintiff in Error.

Opinion filed May 29, 1968.

I. CRIMINAL LAW—*determinative factors as to admissibility of confession.* Determinative factors as to the admissibility of a confession include, not only illegal detention and interrogation, as well as the duration thereof and controverted claims of physical violence and threats of violence, but also include disregard of the rudimentary necessities of life, failure to advise the accused of his right to counsel and other constitutional rights, isolation from family or friends, and the accused's age, education, emotional characteristics and experience in criminal matters. (p. 107)

2. SAME—*when murder confession is not admissible.* An 18-year-old defendant's signed confession should not be admitted in evidence at his trial for murder, where there were no eyewitnesses to the crime, and, prior to confessing, defendant was questioned by police for 8 to 10 hours on two occasions, later arrested for disorderly conduct and incarcerated for 18 days in solitary confinement, and then interrogated extensively by police immediately after his release on a peace bond relevant to the disorderly charge, and where, except for denial of physical violence or threat thereof, all relevant factors tending to show the confession to be involuntary are not denied by the People. (p. 108)

WARD, J., took no part.

WRIT OF ERROR to the Circuit Court of Cook County; the Hon. DAVID A. CANEL, Judge, presiding.

WILLIAM J. COONEY, of Chicago, appointed by the court, for plaintiff in error.

WILLIAM G. CLARK, Attorney General, of Springfield, and JOHN J. STAMOS, State's Attorney, of Chicago, (FRED G. LEACH, Assistant Attorney General, and ELMER C. KISSANE and JAMES R. TRUSCHKE, Assistant State's Attorneys, of counsel,) for the People.

Mr. JUSTICE HOUSE delivered the opinion of the court:

A jury in the circuit court of Cook County found defendant, James Richard Duncan, guilty of the murder of Samuel Schwartz and fixed his punishment at imprisonment for a term of 30 years. A constitutional question gives us jurisdiction.

About 10:00 P.M. on October 4, 1959, Samuel Schwartz, a 15-year-old boy, was stabbed and killed on the elevated platform of the Chicago Transit Authority at 22nd Street and State Street in Chicago. There were no witnesses to the murder. The People's evidence connecting defendant with the crime was the testimony of two boys, Carl Remmer and Louis Mayberry, who said that shortly after 10:00 P.M. on that night they saw defendant at 2222 South State Street and he told them he had just killed a "stud" on the 22nd Street elevated station a few minutes before and produced the knife he used. A written confession given to the police on November 12, 1959, was also admitted in evidence.

Defendant denied making an oral confession to the youths who testified for the People and said that the written confession to the police was coerced. He said he was at a dance from 8:30 P.M. until midnight on the night of the murder. Six other youths corroborated his alibi. However, four teenage girls testified that defendant was at the elevated station shortly before the murder, although two of the girls

on cross-examination could not fix the time they had seen defendant.

Defendant first argues that his written confession was coerced by the police officers. He testified that on October 9 he was taken to the police station with other boys from his housing project and questioned about the murder from about 5 p.m. until 10 P.M. and on October 17 he was again taken to the police station and questioned about the murder for about 3 or 4 hours. On October 21 defendant was arrested for disorderly conduct. (While the record is not clear on the point, it would appear that defendant and two companions were using profane language in the elevated station at 58th Street. A police officer talked with them, defendant argued with the officer and only he was arrested.) He was taken to a judge, his case was continued to November 12 and he was held in custody at the House of Correction pending his trial on the disorderly conduct charge. After he was there three days, he was put into the "hole" for talking when the lights were out. The "hole" was described as a cell with no bed and the prisoner is fed only one meal a day at 3:00 P.M. Defendant was confined in the "hole" until the morning of November 12 when he was taken to court about 9:00 A.M. on the disorderly conduct charge. The judge had him sign a peace bond and he was released. As he was leaving the courtroom, two police officers took him to the eighth floor of the same building.

The police began questioning him about 9:30 A. M. Defendant claims he was slapped several times and threatened with brass knuckles. The police officers all denied that there was any physical violence or threat of physical violence. The questioning continued until about 1:30 P. M. when defendant confessed, and about that time he was given a sandwich, a candy bar, a bottle of soda pop and a cigarette. He was questioned further that afternoon and at 7:42 P. M. he signed a written confession. He was formally charged with murder about 20 minutes later.

The People quote the familiar rules applied in reviewing the admission of an allegedly coerced confession that the trial court need not be convinced beyond a reasonable doubt of the voluntary nature of a confession, and that the decision of the trial court will not be disturbed unless manifestly against the weight of the evidence. Cases are also cited where the illegal detention and questioning was longer than in this case and there were controverted claims of beating and threats of violence and yet the trial court's decision to admit a confession has been upheld. Nevertheless, determinative factors as to the admissibility of a confession include not only the illegal detention and its duration, the interrogation and its duration, the controverted claims of physical violence and threats of violence, but also include disregard of the rudimentary necessities of life, failure to advise the accused of his right to counsel and other constitutional rights, isolation from family or friends, and the accused's age, education, emotional characteristics and experience in criminal matters.

Defendant was a 17-year-old high school dropout who turned 18 while he was in custody awaiting trial on the disorderly conduct charge. The police had questioned him for some 8 to 10 hours on two previous occasions prior to his arrest and incarceration for disorderly conduct on October 21. About October 25 Carl Remmer told the police defendant had told him he stabbed a boy on the 22nd Street elevated platform. Defendant was at about this time placed in the "hole" where he stayed for 18 days, slept on the floor, received only one meal a day and saw neither family nor friends. On the morning of November 12, immediately after defendant was released on a peace bond, the police, with information they had possessed for the past 18 days, apprehended defendant in the courtroom and, took him to a room upstairs, handcuffed him to a chair and questioned him until he orally confessed at 1:30 P. M. and signed a confession at 7:42 P. M.

Except for the denial of physical violence or threat thereof, all of the other relevant factors which tend to show that the confession was not given voluntarily are not denied by the People. And, while the record does not demonstrate that the police had defendant placed in the "hole" for 18 days in order to obtain a confession, it does demonstrate that they knowingly took advantage of the situation. The total combination of circumstances surrounding the giving of the confession indicate that it was involuntary and it was error to admit it in evidence. *People* v. *Price*, 24 Ill. 2d 46.

Other trial errors alleged by defendant are not likely to recur on a new trial of the cause. The judgment of the circuit court of Cook County is reversed and the cause remanded for a new trial.

Reversed and remanded.

Mr. Justice Ward took no part in the consideration or decision of this case.

COPY BOUND TO CLOSE IN CENTER

APPENDIX E.

UNITED STATES COURT OF APPEALS.
For the Seventh Circuit
Chicago, Illinois 60604

April 25, 1972.

fore

Hon. F. Ryan Duffy, Sr., Circuit Judge.
Hon. Robert A. Sprecher, Circuit Judge.
Hon. Jesse E. Eschbach, District Judge.

JAMES RICHARD DUNCAN,
Plaintiff-Appellant,
71-1208 *vs.*
JOHN NELSON, et al., etc.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

IT IS ORDERED by the Court that the petition for rehearing in this cause be and the same is hereby DENIED.